

FILED

07 NOV 20 PM 3:37

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY:

DEPUTY

HAMID REZA HEDAYAT ZADEH  
P.O. Box 1540  
Poway, CA 92074  
*Pro se Petitioner/ Plaintiff*

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

HAMID REZA HEDAYAT ZADEH  
Plaintiff/Petitioner

vs.

MICHAEL CHERTOFF, Secretary of The  
Department of Homeland Security;  
EDUARDO AGUIRRE JR. Director of The  
United States Citizenship and Immigration  
Services (CIS); Office of U.S. Citizenship and  
Immigration Service for the County of San  
Diego

Defendants/Respondents

Case No.

07 CV 2220 JAH(CAB)

PETITION FOR HEARING ON  
NATURALIZATION APPLICATION UNDER  
USC § 1447 (B) FOR A STALLED  
NATURALIZATION APPLICATION

Date:

Time:

Department:

Judge:

COMES NOW HAMID REZA HEDAYAT ZADEH (herein "Petitioner") and  
respectfully submits the instant Petition for consideration and adjudication in Court and by the  
Court of Petitioner's Stalled Naturalization Application under USC §1447(b), or in the  
alternative for an Order remanding the same to CIS for immediate adjudication.

Petitioner states as follows:

**JURISDICTION**

Jurisdiction and venue of this action lie with this Court which is the United States District

1 Court for the Southern District of California and is further appropriate for the following reasons:  
 2 (A) Plaintiff has at all times herein mentioned resided in this district; (B) Defendants have  
 3 engaged extensively in matters of immigration and homeland security in this district; and (C) the  
 4 claim at issue arose in this district.

## 6 **I. INTRODUCTION AND PROCEDURAL HISTORY**

7 Petitioner has lived and worked in the United States as a lawful permanent resident  
 8 ("LPR") since his arrival here on January 12, 1996; in 2004, Petitioner filed an application with  
 9 the U.S. Citizenship and Immigration Services in San Diego, California for a change of status  
 10 from an LPR to that of a naturalized citizen (N400), which application was conditionally granted  
 11 on May 5, 2005.

12 At this initial examination, Petitioner was prompted by the Citizenship and Immigration  
 13 Service's (herein "CIS") examining officer to sign a waiver of the "*120-Day Decision Deadline*"  
 14 under INA § 336(b) but later moved for, and was subsequently granted a full retraction on July  
 15 16, 2007.

16 Petitioner has to wit, made at least three proper and good faith inquiries to the office of  
 17 the CIS as to the status and for any other foreseeable time-line for conclusion and the final  
 18 disposition of her **STALLED** Naturalization Application, and to each inquiry she received the  
 19 same inconclusive, vague, and open ended response.

20 Therefore, in light of the expiration of the statutory "*120-Day Decision Deadline*" period  
 21 under INA §336(b) on November 16, 2007 and the CIS's continued failure to render final  
 22 adjudication of Petitioner's Naturalization Application, Petitioner moved to compel response  
 23 from CIS by and through the instant petition.

## 25 **II. DISCUSSION**

### 26 **(A) APPLICABLE LAW**

27 INA Section 336(b) and 8 USC §1447(b) specifically provide for a judicial review by a  
 28 U.S. District Court for a Stalled Naturalization Application and states as follows:

*"If there is a failure to make a determination under [INA] §335 [8 U.S.C. §1446] before the end*

1 of the 120 day period after the date on which the examination is conducted under such section, ,  
2 the applicant may apply to the United States District Court for the district in which the applicant  
3 resides for a hearing on the matter. This court has jurisdiction of the matter and may either  
4 determine the matter or remand the matter, with appropriate instructions to the Service to  
5 determine the matter."

6 In short, the statute authorizes the aggrieved naturalization applicant to seek judicial  
7 review if more than 120 days have past since the initial examination.

8  
9 **(B) PETITIONER IS ELIGIBLE TO SEEK RELIEF UNDER 8 USC §1447(B)**

10 Petitioner's application for naturalization was considered by CIS who after conducting an  
11 examination conditionally approved the application, with the final decision pending, and, based  
12 on the completion of background and security checks.

13 In or about July of 2007, a period of well over two (2) years had passed since the initial  
14 examination but due to the involuntary signing of the waiver under INA §336(b), Petitioner  
15 could not pursue any judicial remedies.

16 On July 16, 2007, Petitioner moved for, and was granted a retraction of the waiver by the  
17 CIS, from which date the 120-Day Decision Deadline period began to accrue. This period  
18 however, expired on November 16, 2007, at which time Petitioner had still not been given a  
19 decision on her naturalization application by the CIS.

20 Notwithstanding the expiration of the statutory period, it has now been thirty (30) months  
21 since Petitioner was initially examined and conditionally approved for Citizenship. Therefore, he  
22 is unequivocally eligible to seek this judicial review and relief under 8 USC §1447(b).

23  
24 **(C) AVAILABLE FORMS OF RELIEF UNDER 8 USC §1447(b)**

25 8 USC §1447(b) provides for two forms of relief:

- 26 (1) An adjudication of the naturalization application in court and by the court, or  
27 (2) A remand to CIS for immediate adjudication.  
28

1        Considering the inordinate and unreasonable passage of time together with the continued  
2 failure of the CIS to proceed with diligence, Petitioner by and through this petition moves for  
3 and seeks the relief of adjudication in Court and by the Court of his stalled naturalization  
4 application. For this purpose, Petitioner avers that he has satisfied all of the requirements for  
5 naturalization

6        Petitioner by and through this petition moves for and seeks *IN THE ALTERNATIVE*, the  
7 order of this Honorable Court remanding the matter to CIS with instructions for immediate  
8 adjudication.

9  
10                                    **III. CONCLUSION**

11        For the foregoing reasons and any others provided at the hearing, Petitioner prays that the  
12 Court decide her naturalization application in Court and by the Court, or alternatively, remand  
13 this matter to CIS with instructions for immediate adjudication.

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17                                    Respectfully Submitted,

18  
19                                    HAMID REZA HEDAYAT ZADEH

20                                    

21                                    Pro Se Petitioner  
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JS 44 (Rev. 11/04)

## CIVIL COVER SHEET

FILED

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

HAMID REZA HEDAYAT ZADEH

## DEFENDANTS

MICHAEL CHERTOFF  
EDUARDO AGUIRRE JR.(b) County of Residence of First Listed Plaintiff San Diego  
(EXCEPT IN U.S. PLAINTIFF CASES)County of Residence of First Listed Defendant San Diego  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

IN Pro Se

Attorneys (If Known)

07 CV 2220 JAH (CAB)

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |   |   |   |
|---|---|---|---|
| Citizen of This State                   | PTF <input type="checkbox"/> 1 DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4 |
| Citizen of Another State                | PTF <input type="checkbox"/> 2 DEF <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | PTF <input type="checkbox"/> 5 DEF <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | PTF <input type="checkbox"/> 3 DEF <input type="checkbox"/> 3 | Foreign Nation  | PTF <input type="checkbox"/> 6 DEF <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395M) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. 1447(b)

Brief description of cause:

DETERMINATION OF NATURALIZATION APPLICATION

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

COURT ADJUDICATION

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

## VIII. RELATED CASE(S)

IF ANY N/A

(See instructions):

JUDGE

DOCKET NUMBER

DATE NOV 20 2007

SIGNATURE OF ATTORNEY OF RECORD

Handwritten signature

FOR OFFICE USE ONLY

RECEIPT # 144718 AMOUNT \$350

APPLYING IFP

JUDGE

MAG. JUDGE

See 11/20/07

**UNITED STATES  
DISTRICT COURT**  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION

# 144718 - SH

November 20, 2007  
15:38:35

**Civ Fil Non-Pris  
07-00220**

Judge...: JOHN A HOUSTON ,  
Amount.: \$350.00 CC

**Total-> \$350.00**

**FROM: HEDAYATZADEH V. CHERTOFF ET AL**